No. 79-1943

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1980

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA and T. EDWARD WHITE,

*Appellants,*

*vs.*

RAYBESTOS-MANHATTAN, INC. and RAYBESTOS-MANHATTAN INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

*Appellees.*

**On Appeal from the Final Order of the United States Court of Appeals for the Third Circuit**

## JOINT APPENDIX


MICHAEL S. SCAROLA,
GELMAN & GELMAN,
45 Church Street,
Patterson, N. J. 07505.
(201) 523-8050
*Counsel for Appellants*

SEBASTIAN J. FORTUNATO,
PITNEY, HARDIN & KIPP,
163 Madison Avenue,
Morristown, N. J. 07960.
(201) 267-3333
*Counsel for Appellees*



APPEAL DOCKETED JUNE 10, 1980

PROBABLE JURISDICTION NOTED NOVEMBER 3, 1980

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## APPENDIX 1

**Relevant Docket Entries**

1) Complaint filed in the Superior Court of New Jersey January 17, 1978.

2) Stipulation extending Time to Answer dated February 17, 1978.

3) Petition for Removal and Notice of Removal served on or about March 5, 1978.

4) Answer served on or about March 9, 1978.

5) Notice of Motion for Remand filed on or about March 25, 1978.

6) Plaintiffs Pre-Trial Memorandum filed on or about May 27, 1978.

7) Defendants Pre-Trial Memorandum served on or about June 7, 1978.

8) Pre-Trial Order entered November 30, 1978.

9) Statement of Stipulated Facts filed on or about December 24, 1978.

10) Opinion of the Honorable Lawrence A. Whipple, United States District Court, District of New Jersey filed February 15, 1979.

11) Order for Judgment in the United States District Court entered March 1, 1979.

12) Defendants Notice of Appeal to the United States Court of Appeals for the Third Circuit filed March 19, 1979.

*Appendix 1*

13) Defendants Motion for Stay of Payment of Damages and Order Granting Stay of Payment of Damages and approving supersedeas bond entered March 21, 1979.

14) Defendants Notice of Motion for Stay of Injunctive Relief served on or about March 22, 1979.

15) Consent Order Granting Stay of Injunctive Relief entered May 3, 1979.

16) Motion for Leave to Intervene filed by the Attorney General of the State of New Jersey on or about August 9, 1979.

17) Order Granting the Attorney General of New Jersey Leave to Intervene entered on September 7, 1979.

18) Opinion of the United States Court of Appeals for the Third Circuit filed February 15, 1980.

19) Plaintiffs Petition for Rehearing in Banc filed on or about February 27, 1980.

20) Order Denying Plaintiffs Petition for Rehearing in Banc entered March 19, 1980.

21) Judgment of the United States Court of Appeals for the Third Circuit issued March 27, 1980.

22) Order and Judgment on Remand to the United States District Court filed on or about April 18, 1980.

23) Notice of Appeal to the Supreme Court of the United States filed April 25, 1980.

24) Order of Dismissal as to plaintiff, Helen Vogt entered July 14, 1980.

## APPENDIX 2

### Plaintiffs' Complaint

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION—PASSAIC COUNTY

DOCKET No. C-1707-77

Plaintiffs, on behalf of themselves and all those persons similarly situated for their Complaint, allege:

FIRST COUNT

1. The named plaintiffs reside at the following post office addresses:

Joseph Alessi, 3 Redstone Lane, Lodi, New Jersey

Raymond Buisson, 98 Kossuth Street, Wallington, N.J.

Stephen Michalski, 51 Stern Avenue, Wallington, N.J.

Charles Repka, 76 Tuella Avenue, Elmwood Park, N.J.

T. Edward White, 105 Viola Avenue, Clifton, N.J.

Helen Vogt, 28 Pepper Road, Towaco, N.J.

2. This action is brought on behalf of the plaintiffs as well as on behalf of each and all other persons similarly situated. Such persons are so numerous as to make it impracticable to bring them all before the Court.

3. Plaintiffs claims are typical of the claims of such persons, the plaintiffs will adequately and fairly represent

the interests of all such persons, there are questions of law and fact common to all plaintiffs and all such other persons, and the prosecution of individual actions by individual members of the class would establish incompatible standards of conduct for the parties opposing the class.

4. Plaintiffs for themselves and for and on behalf of all persons similarly situated complain of the defendants and allege that they, are all former employees of the defendant, Raybestos Manhattan, Inc.

5. They are contractually entitled to Retirement Income payments from defendants, Raybestos Manhattan Inc. Employee Retirement Plan, and Raybestos Manhattan, Inc,

6. They have secured Judgments against defendant, Raybestos Manhattan Inc. in the New Jersey Department of Labor and Industry, Division of Worker's Compensation, pursuant to the applicable provisions of N.J.S.A. 34: 15-1 et seq.

7. Defendants have failed to make payments to the plaintiffs and such other persons as per certain provisions of the Raybestos Manhattan Inc. Employee Retirement Plan.

8. Defendants have set off and continue to set off sums of the compensation Judgments, as set forth in Paragraph 6 hereof, against the retirement pension benefits or payments to which the plaintiffs and such other persons are entitled contrary to the provisions of N.J.S.A. 34:15-29.

9. Demand has been made upon the defendants to cease and desist in said illegal practices and to repay all sums

due to plaintiffs but the defendants have failed, neglected and refused to so comply.

10. No action is pending in any Court involving the matters herein in dispute.

WHEREFORE, Plaintiffs demand:

A. Declaratory Judgment that the set offs by the defendants are and were illegal and shall cease;

B. That this Court construes the terms of the Raybestos Manhattan Inc. Employee Retirement Plan in light of N.J.S.A. 34:15-29 and determine that the defendants are obligated to pay to the plaintiffs the sums due under said Plan in addition to the full amount of any Worker's Compensation Judgment entered;

C. Such other and further relief as this Court may deem just in the premises;

D. Judgment for costs of suit.

SECOND COUNT

1. Plaintiffs repeat all the allegations set forth in Paragraphs 1 through 10 of the First Count with the same force and effect as set forth at length herein.

WHEREFORE, plaintiffs demand Judgment against the defendants for all sums set off and for general and special damages, plus costs of suit and interest, jointly, severally or in the alternative.

Gelman & Gelman
Attorneys for the Plaintiffs
By Michael S. Scarola

## APPENDIX 3

### Notice of Removal

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION No. 78-0434

To: MICHAEL S. SCAROLA, ESQ.
Gelman & Gelman
45 Church Street
Patterson, New Jersey 07505

SIR:

PLEASE TAKE NOTICE that no March 3rd, 1978, defendants Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc., Employee Retirement Plan, filed in the United States District Court for the District of New Jersey their Petition for Removal, accompanied by Bond on Removal in the above-entitled action from the Superior Court of New Jersey, Chancery Division, Passaic County, to the United States District Court for the District of New Jersey.

This Notice is given pursuant to the provisions of Section 1446(e) of Title 28 of the United States Code. Accompanying this Notice is a copy of the Petition and Bond so filed. Copies of the Petition have been filed with the Clerk of the Superior Court of New Jersey.

PITNEY, HARDIN & KIPP
163 Madison Avenue
Morristown, New Jersey 07960
By S. JOSEPH FORTUNATO
A Member of the Firm
Attorney for Defendants Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc., Employee Retirement Plan

Dated: March 3, 1978

## APPENDIX 4

### Defendants' Answer

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION No. 78-0434

The defendants, Raybestos-Manhattan, Inc., a corporation organized and existing under the laws of the State of Connecticut and having its principal place of business at 100 Oakview Drive, Trumbull, Connecticut, and Raybestos-Manhattan, Inc., Employee Retirement Plan, by way of answer to the complaint, say:

ANSWER TO THE FIRST COUNT

1. They are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 1.

2. Answering the allegations of paragraph 2, they are without information or knowledge sufficient to form a belief as to the truth of the allegations, except that they deny that plaintiffs and those for whom the action is brought are similarly situated.

3. They deny the allegations of paragraph 3.

4. Answering the allegations of paragraph 4, they admit that the named plaintiffs are all former employees of the defendant Raybestos-Manhattan, Inc., but deny that plaintiffs and those for whom the action is brought are similarly situated.

*Appendix 4*

5. They deny the allegations contained in paragraph 5, except that they admit that although the named plaintiffs are contractually entitled to Retirement Income Payments from defendants, defendants are permitted under the terms of the collective bargaining agreement to offset from such payments any amounts paid in worker's compensation judgment payments.

6. They deny the allegations contained in Paragraph 6, except they admit the allegations as they apply to the named plaintiffs.

7. They deny the allegations contained in paragraph 7.

8. They deny the allegations contained in paragraph 8, since it is proper for them to follow the terms of the contract and set-off sums paid for worker's compensation judgment to named plaintiffs from retirement income payments to named plaintiffs.

9. They deny the allegations in paragraph 9, except they admit the named plaintiffs have made a demand upon them to discontinue setting-off worker's compensation judgments payments from retirement income payments and defendants have refused that demand.

10. They are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10.

ANSWER TO THE SECOND COUNT

1. Answering the allegations of paragraph 1, they repeat paragraph 1 through 10 of their Answer to the First Count as though fully set forth at length.

*Appendix 4*

FIRST SEPARATE DEFENSE TO ALL COUNTS

It was proper for defendants to follow the terms of the collective bargaining agreement entered into between Raybestos-Manhattan, Inc. and the union which represented the named plaintiffs and set-off sums paid to named plaintiffs for worker's compensation judgments from retirement income payments to named plaintiffs, since N.J.S.A. 34:15-29 has been preempted by and is contrary to the provisions of 29 U.S.C. §1444 and thus unconstitutional, since the present Complaint concerns an employee pension benefit plan under the provisions of 29 U.S.C. §1081.

SECOND SEPARATE DEFENSE TO ALL COUNTS

It was proper for defendants to follow the terms of the collective bargaining agreement entered into between Raybestos-Manhattan, Inc. and the Union which represented the named plaintiffs and set-off sums to paid named plaintiffs for worker's compensation judgments from retirement income payments to named plaintiffs, since N.J.S.A. 34:15-29 infringes upon the federal interest in untrammelled collective bargaining and is thus preempted by the provisions of 29 U.S.C. §141 and §185(a) and is unconstitutional.

PITNEY, HARDIN & KIPP
Attorneys for Defendants Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc., Employee Retirement Plan
By S. JOSEPH FORTUNATO
A Member of the Firm.

*Appendix 4*

CERTIFICATION

We certify that a copy of the within Answer was served upon Messrs. Gelman & Gelman, attorneys for plaintiffs, at 45 Church Street, Paterson, New Jersey 07505, by certified first class mail, return receipt requested.

S. JOSEPH FORTUNATO

Dated: March 7, 1978

## APPENDIX 5

### Pretrial Order

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 78-0434

(Hon. Lawrence A. Whipple)

November 27, 1978
Newark, New Jersey

Before the Honorable William J. Hunt
United States Magistrate

Appearances: Jack Cohen, Esq.
Gelman and Gelman
For Plaintiffs.

S. Joseph Fortunato, Esq.
Arnold S. Cohen, Esq.
Pitney, Hardin & Kipp
For Defendants.

1. *Nature of the Action*: This action was removed from State to Federal Court pursuant to 28 U.S.C. §1441. It is an action based upon the plaintiffs' claim that defendants have and continue to improperly adhere to the terms of a collective bargaining agreement which permits the defendants to offset from retirement income payments, payments made pursuant to worker's compensation judgments. Jurisdiction in this court is based upon 28 U.S.C. §1337; 29 U.S.C. §§141; 185; 1001, *et seq.;* 1002; 1003 and 1132.

2. *Admissions and Stipulations*: Prior to trial in this matter a comprehensive stipulation demonstrating the absence

of any material facts in dispute is to be filed by counsel for both parties.

3. *Factual and Legal Contentions of Plaintiffs*: See attached.

4. *Factual and Legal Contentions of Defendants*: See attached.

5. *Claims as to Damages*: The plaintiffs demand a declaratory judgment that the setoffs by defendants are illegal and that defendants shall cease and desist from making the setoffs and that defendants pay to them the sums of the setoff, plus all general and special damages and the costs of suit and interest.

6. *Amendments*: The defendants First Separate Defense to all counts of their Answer is amended to read as follows:

> "It was proper for defendants to follow the terms of the collective bargaining agreement entered into between Raybestos-Manhattan, Inc., and the Union which represented the named plaintiffs and setoff sums paid to named plaintiffs for worker's compensation judgments from retirement income payments to named plaintiffs, since N.J.S.A. 34:15-29 has been preempted by 29 U.S.C. §1144 and is contrary to the provisions and policy of 29 U.S.C. §1001, *et seq.*, and is thus unconstitutional."

In addition, a Third Affirmative Defense to the Answer is added as follows:

> "N.J.S.A. 34:15-29 has an unfair retroactive impact on the contractual obligations of the named

plaintiffs and the defendants in violation of the Due Process Clause of the Fourteenth Amendment in the Contract Clause of the United States Constitution."

The foregoing amendments to the Answer of the defendants is upon consent of counsel for the plaintiffs.

7. *Legal Issues*: The plaintiffs state that the defendants have set off and continue to set off worker's compensation judgment payments from retirement income payments contrary to the provisions of N.J.S.A. 34:15-29.

Defendants contend that it is proper for them to follow the terms of the collective bargaining agreement and make the above-mentioned setoffs because N.J.S.A. 34:15-29 has been preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1001, *et seq.*, and the Labor Management Relations Act of 1947 (LMRA), as amended, 29 U.S.C. §141, *et seq.*, and is contrary to the provisions and policy of ERISA and to the policy of untrammelled collective bargaining under the LMRA, and is thus unconstitutional.

8. *Legal Issues Abandoned*: None.

9. *Additional Discovery:* None.

10. *Briefs:* Counsel shall submit trial memoranda in accordance with General Rule 27 of this Court's Rules not later than December 18, 1978.

11. *Motions:* None.

12. *Opening and Closing:* Usual order.

13. *Expert Witnesses:* None.

*Appendix 5*

14. *Estimated Length of Trial:* One day. Counsel for the parties at pretrial conference have advised the magistrate that a comprehensive stipulation of material facts was in preparation. Accordingly, trial of the within matter may require less than one day.

15. *Trial Counsel:*

For the Plaintiffs: Gelman and Gelman, Esqs.
For the Defendants: Pitney, Hardin & Kipp, Esqs.

16. *Trial Date:* This matter has been called for trial before the Honorable Lawrence A. Whipple on December 26, 1978, at 10:00 A.M.

WILLIAM J. HUNT
United States Magistrate

## APPENDIX 6

### Statement of Stipulated Facts

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION No. 78-0434

The parties to the above captioned-matter hereby agree to stipulate to the following facts for the purposes of this litigation only:

(1) The plaintiffs in this action are all former employees of defendant, Raybestos-Manhattan, Inc. (Raybestos).

(2) The plaintiffs' dates of service are: (a) Joseph Alessi, September 14, 1939 to March 1, 1972; (b) Raymond Buisson, November 10, 1941 to January 1, 1973; (c) Stephen Michalski, June 30, 1942 to February 28, 1973; (d) Charles Pepka, June 22, 1934 to June 13, 1973; (e) Helen Vogt, August 17, 1944 to September 28, 1973; (f) T. Edward White, July 8, 1941 to June 8, 1973.

(3) With the exception of Helen Vogt, the plaintiffs are all entitled to retirement income payments from Raybestos under the terms of the Raybestos-Manhattan Inc Employee Retirement Plan (Pension Plan).

(4) Although Helen Vogt did not qualify for retirement under the terms of the Pension Plan, she is eligible to receive Deferred Termination Benefits commencing February 1, 1979.

(5) Many more former employees of Raybestos are receiving or are entitled to receive pension or deferred compensation benefits.

*Appendix 6*

(6) Article VI, Section (4)(b) of the Pension Plan and the Deferred Termination Benefits agreement provide in relevant part that workmen's compensation benefits are deductible from pension benefits.

(7) Under the terms of the Pension Plans a person is paid a lump sum amount at the time the workmen's compensation judgment is awarded. Thereafter, when he commences receiving pension or deferred compensation payments, a certain amount is deducted each month from these payments until the amount paid in workmen's compensation judgment is fully offset.

(8) The offset provision provides:

> All Retirement Income payments shall be reduced by the entire amount of any and all payments the Member is eligible to receive under any and all statutes pertaining to workmen's compensation, occupational disease, unemployment compensation, cash sickness benefits, and similar laws, other than primary Social Security benefits, Presently in effect or which may be enacted from time to time, which payments are paid concurrently with the Retirement Income.

(9) Effective July 14, 1977, N.J.S.A. 34:15-29 was amended by Chapter 156 of the Laws of 1977 to include a provision that:

> The right of compensation granted by this Chapter may not be set off against employee's retirement pension benefits or payments.

(10) Each of the plaintiffs secured a Judgment against the respondent pursuant to the New Jersey Worker's Compensation Act (N.J.S.A. 34:15-1 *et seq.*).

(11) The date and amount of the award for each respective plaintiff are: (a) Joseph Alessi, November 30, 1977, $6,470.00; (b) Raymond Buisson, October 20, 1977, $6,760.00; (c) Stephen Michalski, November 9, 1977, $4,380.00; (d) Charles Repka, August 8, 1977 $6,200.00; (e) Helen Vogt, November 21, 1977, $880.00; (f) T. Edward White, November 21, 1977, $6,170.00.

(12) Since the date of the respective worker's compensation awards, the following offsets have been made monthly by defendant: (a) Joseph Alessi ($173); (b) Raymond Buisson ($154); (c) Stephen Michalski ($170); (d) Charles Repka ($173); (e) Helen Vogt (none); (f) T. Edward White ($158).

(13) Plaintiffs' made a demand upon defendant after Chapter 156 was enacted to cease offsetting workmen's compensation judgment payments from retirement income payments.

(14) Defendant has refused to comply with the demand for the legal reasons stated in its brief.

(15) The question presented in this case is whether the deductions made subsequent to the date Chapter 156 was amended are lawful.

PITNEY, HARDIN & KIPP
Attorneys for Defendants
S. JOSEPH FORTUNATO

GELMAN and GELMAN
Attorneys for Plaintiffs
MICHAEL S. SCAROLA

## APPENDIX 7

**Order of the Honorable Curtis Meanor**

(Filed—March 1, 1979)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION No. 78-0434

The within matter having been brought for trial before me, the Honorable Lawrence A. Whipple, Senior Judge, U. S. D. C. and counsel for both parties having submitted a comprehensive stipulation of facts and trial briefs and having consented to the Court deciding this matter based upon said submissions; and the Court having read and considered the same and having found in favor of the plaintiffs, as is more fully and particularly set forth in the Opinion of the Court filed with the Clerk of the Court on February 15, 1979; and for good cause appearing;

It is on this 1 day of March 1979

ORDERED,

That, until the further order of this Court, the defendants, Raybestos Manhattan, Inc. and Raybestos Manhattan, Inc. Employee Retirement Plan, and its officers, agents, representatives, and servants be and are hereby permanently enjoined and restrained from making any deduction or set-off against monthly pension benefits due to the plaintiffs on account of Worker's Compensation benefits awarded to said plaintiffs, and it is further

ORDERED,

That the defendants, Raybestos Manhattan Inc., and Raybestos Manhattan Inc. Employee Retirement Plan shall

pay to each of the plaintiffs the entire amount heretofore deducted or set-off against their respective monthly pension benefits on account of Worker's Compensation benefits awarded, together with eight (8) percentum interest thereon; in accordance with the following schedule:

1. Joseph Alessi—fourteen monthly set offs of $173.00. Total deductions including interest of $2,615.76;

2. Raymond Buisson—fifteen monthly set offs of $154.00. Total deductions including interest of $2,494.80;

3. Stephen Michalski—fourteen monthly sets off of $170.00. Total deductions including interest of $2,570.40;

4. Charles Repka—seventeen monthly set offs of $173.00. Total deductions including interest of $3,176.28;

5. Edward T. White—fourteen monthly deductions of $158.00. Total deductions including interest of $2,388.96.

/s/ MEANOR
Judge, U.S.D.C.

## APPENDIX 8

**Petition for Rehearing in Banc**

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

DOCKET NO. 79-1534

*To the Honorable Judges of the United States Court of Appeals for the Third Circuit*:

Joseph Alessi, Raymond Buisson, Stephen Michalski, Charles Repka, Helen Vogt, and T. Edward White, the plaintiff-appellees above named, present this, their petition for a rehearing in the above-entitled cause, and, in support thereof, respectfully show:

I

The Court, in its opinion of reversal herein, has failed to apply the rules and standards set forth in *Rogers* v. *Larson,* 563 F.2d 617 (3d Cir., 1977) *cert. denied,* 58 L. Ed. 2d 95 (1978) for determining federal pre-emption of state law. In so doing the Court has overlooked the importance of the preservation to the States of their historic police powers, including a State's right to ensure that injured employees are justly compensated.

II

The Court premises its opinion that the offset of Worker's Compensation benefits is not a forfeiture within the meaning of ERISA, upon an implicit approval, by

*Appendix 8*

Congress, of the integration of Social Security benefits with pension plan benefits. The Court reasons that because the Social Security program may encompass benefits paid both for old age and disability that Worker's Compensation benefits cannot be distinguished. The Court's conclusion misapprehends the true character of Worker's Compensation benefits.

As a consequence of the Court's failure to perceive the true character of Worker's Compensation benefits, the tests prescribed by *Batterton* v. *Francis,* 432 U.S. 416 (1977) for review of legislative regulations were not followed. Petitioner contends that regulations permitting the offset of Worker's Compensation benefits tend to defeat the purpose of the overall statutory scheme of ERISA and should be set aside.

I express a belief, based upon a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit and the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court, to wit, the panel's decision is contrary to the decision of this Court and the Supreme Court in *Rogers* v. *Larson, supra* and *Batterton* v. *Francis, supra.*

Moreover, this appeal involves questions of exceptional importance, to wit: given the divergence of opinion exhibited by various courts (as evidenced by this Court in footnote 10 of its Opinion) concerning the uninhibited right to otherwise vested pension benefits versus the integrity of Treasury regulations and the wide interest expressed in this case by amici curiae, the legal issues presented may be of national importance and thus worthy of the attention of the full court.

*Appendix 8*

Wherefore, for all the reasons set forth above as well as in our papers previously submitted and on file with this Court, it is respectfully requested that a Rehearing in Banc be granted.

GELMAN & GELMAN
Attorneys for Petitioner
45 Church Street
Paterson, N.J. 07505
By: MICHAEL S. SCAROLA

## APPENDIX 9

**Judgment of the United States Court of Appeals For the Third Circuit**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 79-1534

---

ALESSI, JOSEPH, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKS, HELEN VOGT and T. EDWARD WHITE

*vs.*

RAYBESTOS-MANHATTAN, INC., and RAYBESTOS-MANHATTAN, INC., EMPLOYEE RETIREMENT PLAN, JOINTLY, SEVERALLY AND IN THE ALTERNATIVE,

Appellants

STATE OF NEW JERSEY,

Intervenor

(D. C. Civil No. 78-0434)

No. 79-1668

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*Appendix 9*

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BUCZYNSKI, Henry, ALEX BORUSOVIC AND OTHER RETIREES SIMILARLY SITUATED

*vs.*

THE GENERAL MOTORS CORPORATION,

Appellant

STATE OF NEW JERSEY,

Intervenor

(D. C. Civil No. 77-1644)

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: GIBBONS, ROSENN and GARTH, *Circuit Judges*

JUDGMENT

These causes came on to be heard on the records from the United States District Court for the District of New Jersey and were argued by counsel on January 8, 1980.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court dated April 3, 1979 and appealed at our No. 79-1668, and dated March 1, 1979, and appealed at our No. 79-1534, be, and the same are hereby vacated and the causes are remanded to the said District Courts for

entry of judgments for the defendants, all in accordance with the opinion of this Court. Each side shall bear its own costs.

ATTEST:

THOMAS F. QUINN
Clerk

Certified as a true copy and issued in lieu of a formal mandate on March 27, 1980.

February 15, 1980

Test: THOMAS F. QUINN

Clerk, United States Court of Appeals
for the Third Circuit

## APPENDIX 10

**Order and Judgment on Remand**

(Filed—April 18, 1980)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CIVIL ACTION 78-0434

---

JOSEPH ALESSI, RAYMOND BUISSON, STEPHEN MICHALSKI, CHARLES REPKA, HELEN VOGT and T. EDWARD WHITE,

Plaintiffs,

vs.

RAYBESTOS-MANHATTAN, INC. and RAYBESTOS-MANHATTAN, INC. EMPLOYEE RETIREMENT PLAN, jointly, severally or in the alternative,

Defendants.

---

Defendants, Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc. Employee Retirement Plan, having appealed to the United States Court of Appeals for the Third Circuit from the Order of this Court entered into this cause on March 1, 1979, and the Court of Appeals having rendered its Opinion and issued its Judgment on February 15, 1980, wherein it was ordered and adjudged that the Judgment of this Court entered in this cause on March 1, 1979 be and is vacated and that the cause be remanded to

this Court for entry of Judgment for the above defendants, with plaintiffs and defendants each bearing their own respective costs, and the Mandate on said Opinion and Judgment having been filed herein on April 1, 1980, and good cause appearing,

IT IS, on this 18th day of April, 1980,

ORDERED AND ADJUDGED, that the Order of this Court entered in this cause on March 1, 1979 be and hereby is vacated; and it is further

ORDERED AND ADJUDGED, that the Order of this Court entered in this cause on March 21, 1979 granting stay of payment of damages pending appeal and approving supersedeas bond, be and hereby is vacated; and it is further

ORDERED AND ADJUDGED, that the Order of this Court entered in this cause on May 3, 1979 granting stay of injunctive relief pending appeal, be and hereby is vacated; and it is further

ORDERED AND ADJUDGED, that Judgment in this cause be and hereby is entered for the defendants Raybestos-Manhattan, Inc. and Raybestos-Manhattan, Inc. Employee Retirement Plan, dismissing the action of the plaintiffs herein, with prejudice and without costs.

LAWRENCE A. WHIPPLE,
U.S.D.J.

We hereby consent to the form and entry of the within Order.

GELMAN & GELMAN
Attorneys for Plaintiffs
By: MICHAEL S. SCAROLA

# APPENDIX 11

## Statement to the Assembly, No. 1309

ASSEMBLY LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1309

STATE OF NEW JERSEY

Dated: May 27, 1976

The statement appended to and printed with the bill adequately explains its provisions. This legislation may have been partially prompted in response to a 1959 New Jersey Supreme Court case, *Renshaw* v. *U.S. Pipe and Foundry Co.*, wherein a retired employee brought an action in which he demanded by way of money damages, all monthly pension benefits since his employer stopped making such payments (due to contractually permitted deductions of workmen's compensation payments). The plaintiff charged that such a provision, in effect, allows the employer to recoup the amount paid the employee for compensation contrary to the only method permitted under the statute. The court declared that, in the absence of a legislative expression of public policy . . . the pension plan provision permitting such reduction of payments after retirement was not invalid.

The New Jersey AFL-CIO supported the bill and the New Jersey Manufacturers stood in opposition.

## APPENDIX 12

### References to Jurisdictional Statement

The following documents are relevant and material to the Court's consideration of the issues in this case and were reproduced in the Appendix of the Jurisdictional Statement filed herein at the pages noted:


Opinion of the Honorable Lawrence A. Whipple dated February 15, 1979 ..... 1a

Opinion of the United States Court of Appeals for the Third Circuit filed February 15, 1980 .. 10a

Order Denying Petition for Rehearing dated March 19, 1980 ..... 43a

Notice of Appeal ..... 45a